

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

STRYKER CORPORATION and  
HOWMEDICA OSTEONICS CORP.,

Plaintiffs,

Case No. 1:05-cv-51

v.

HON. ROBERT HOLMES BELL

XL INSURANCE AMERICA, INC.,  
and TIG INSURANCE COMPANY,

**ORAL ARGUMENT REQUESTED**

Defendants.

---

**DEFENDANT TIG INSURANCE COMPANY'S**  
**MOTION FOR SUMMARY JUDGMENT**

Defendant TIG Insurance Company ("TIG"), through its counsel of record, files this Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 and W.D. Mich. LCivR. 7.2. TIG seeks an order and judgment that it has no obligation to provide coverage to Plaintiffs, Stryker Corporation and Howmedica Osteonics, Corp. ("Stryker"), for the underlying claim settlements at issue in this lawsuit. The undisputed facts establish that there is no coverage under the terms of the TIG Policy for the underlying claim settlements because: (1) Stryker never obtained TIG's consent for the underlying claim settlements even though the TIG Policy's insuring grant is limited to claim settlements (no matter when made) that are consented to by TIG; and there is no legal justification for not enforcing the consent requirement to Stryker's claims in this case; and (2) Stryker breached the conditions of the TIG Policy by failing to provide TIG with documents related to Pfizer, Inc.'s claims and lawsuit against Stryker, which resulted in a lost opportunity

for TIG to associate in those claims and the suit. For both reasons, there is no coverage under the TIG Policy and TIG is entitled to summary judgment. This Motion is supported by the accompanying Memorandum, the Statement of Undisputed Facts and attached exhibits, and the Declaration of Mary E. Fechtig.

Pursuant to W.D. Mich. LCivR. 7.1(d) TIG certifies that TIG and Stryker, through their respective counsel, have made a good faith effort by way of multiple conversations to resolve the issues addressed in this Motion but have been unable to do so.

Thus, TIG respectfully requests that the Court grant TIG's Motion for Summary Judgment and enter an order finding no coverage for Stryker's claims under the TIG Policy.

Respectfully submitted,

Dated: July 31, 2014

By: /s/ Mary E. Fechtig  
Mary E. Fechtig  
Beth A. Stroup  
CARROLL MCNULTY & KULL, LLC  
100 North Riverside Plaza, Ste. 2100  
Chicago, IL 60606  
(312) 800-5000  
[mfechtig@cmk.com](mailto:mfechtig@cmk.com)  
[bstroup@cmk.com](mailto:bstroup@cmk.com)

-and-

Carole D. Bos  
BOS & GLAZIER, P.L.C.  
990 Monroe Avenue N.W.  
Grand Rapids, MI 49503  
(616) 458-6814  
[cbos@bosglazier.com](mailto:cbos@bosglazier.com)

*Attorneys for Defendant – TIG Insurance Company*